

Part of # 29



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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant: LOWENSTEIN, M.

Serial No: 08/422,360

Filed: 04/17/95

Group Art Unit: 2836

Examiner: HUYNH, K

Title: ELECTRICAL FILTER/PROTECTOR, AND METHODS....

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WEINER &amp; BURT, P.C.

**DECLARATION RE COMMERCIAL SUCCESS AND ACCLAIM**

I, Michael Z. Lowenstein, hereby declare that:

1. I am the sole inventor of the subject matter which is disclosed and claimed in the above-identified patent application.
2. I am the President and Chief Technology Officer of Harmonics Limited, LLC, which is the assignee of the above-identified patent application.
3. I have carefully reviewed the above-identified patent application including all amendments filed therein as well as the Amendment-B filed concurrently herewith, and United States Patent Application Serial No. 08/130,088 (which is the parent application of the above-identified patent application) filed on September 30, 1993 including all amendments filed therein, all information

relating to sales, advertising, and commercialization of Harmonics Limited equipment which embodies the subject matter which is claimed in the aforementioned patent applications as initially filed, as well as claimed in all of the aforementioned amendments.

4. The term "INVENTION" as used herein means the invention as claimed in: claims 1-4, 6 and 18 of United States Patent Application Serial No. 08/130,088 and its Preliminary Amendment both filed on September 30, 1993; claims 23-25, 27, 29, 31, 34 and 35 of the Amendment-A filed on November 8, 1994 in United States Patent Application Serial No. 08/130,088; claims 2, 4, 6, 8, 10 and 11 of United States Patent Application Serial No. 08/422,360 as filed on April 17, 1995; claims 2, 4, 6, 11 and 21 of Amendment-B filed on September 2, 1995 in United States Patent Application Serial No. 08/422,360; claims 23, 25, 27, 28, 30 and 32 of the Preliminary Amendment-A filed October 16, 2000 and the subject Continued Prosecution Application (CPA) based on parent application 08/422,360; and claims 22, 26, 29 and 39 of Amendment-B filed concurrently herewith.

5. Equipment embodying the INVENTION was first introduced into the market and made available for sale in January, 1993.

6. Harmonic Limited products embodying the INVENTION have enjoyed significant commercial success since its introduction in January, 1993.

7. The total sales of Harmonics Limited products embodying the INVENTION have exceeded \$10,000,000.00 (Ten Million Dollars) through December 31, 2000.

8. The sales of Harmonics Limited products embodying the INVENTION constitute 95% of the total company sales.

9. "Total company sales" means all Harmonics Limited products sold to the public (with no sales made to representatives or distributors).

10. The sales trends of Harmonics Limited equipment embodying the INVENTION since its introduction in January, 1993 are as follows:

YEAR	1993	1994	1995	1996	1997	1998	1999	2000
SALES (thousands \$)	12	35	40	120	633	1,086	2,083	6,367

11. The commercial success or sales success of the Harmonics Limited products embodying the INVENTION is not due to price concessions. The products are sold at a higher initial cost than products incorporating competing technology.

12. The commercial success or sales success of the Harmonics Limited products embodying the INVENTION is not due to purchases by representatives and distributors. Harmonics Limited products embodying the INVENTION are sold directly to customers, not to distributors or representatives.

13. The commercial success or sales of Harmonics Limited products embodying the INVENTION is not due to a large advertising campaign. The first national advertising campaign for

the INVENTION was launched in June, 2000. Before that date, advertising was by word of mouth and direct customer contact by sales representatives. The national advertising expenditure in the year 2000 relating to Harmonics Limited products embodying the INVENTION was \$60,000.

14. Based on my many years of experience in the industry, the sales of Harmonics Limited products embodying the INVENTION far exceed that which would normally be expected in the relevant marketplace for a new product. For example, in 1996 a major company introduced a competing product that used different technology. The competing product cost over 24 million dollars to develop and was heavily advertised. In two years, sales consisted of less than 50 thousand dollars. The competing product was withdrawn from the marketplace.

15. The market share represented by the above-mentioned sales of Harmonics Limited products embodying the INVENTION is calculated as follows: Sales of all technologies purported to address the same segment of the market addressed by Harmonics Limited products embodying the INVENTION comprise about 10% of the potential market. Harmonics limited products embodying the INVENTION capture about 35% of this segment, or 3.5% of the total market.

16. The size of the market for Harmonics Limited products embodying the INVENTION is about \$300 million.

17. The sales of Harmonics Limited products embodying the INVENTION have come at the expense of other technologies, which have been in the marketplace for many years. These other technologies are offered at a lower price than the Harmonics Limited products embodying the

INVENTION, but the marketplace recognizes the superior technology of the INVENTION and is willing to pay the cost premium for this superior technology. While the market segment has grown marginally, sales of Harmonic Limited products embodying the INVENTION has displaced sales of other technologies.

18. The profitability of Harmonics Limited products embodying the INVENTION is out of the ordinary in the industry, averaging 79%. The usual profitability for products in the industry is under 35%.

19. Harmonics Limited was recognized as one of the 50 fastest growing companies in Connecticut in the year 2000. This growth is entirely due to sales of products embodying the INVENTION.

20. Harmonics Limited's product the TransMax-Plus (i.e., the INVENTION packaged with a transformer) has been named a Top-20 finalist in the CEE (Contractor Electrical Equipment) News Product of the Year Competition for the year 2000. This Harmonics Limited product was featured at the recent Electric West Trade Show in Anaheim, California, and will be featured again in a special supplement in the April 2001 issue of the CEE News. In addition, Harmonics Limited has the license to use the official CEE News Product of the Year Finalist logo on all of its TransMax literature.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or

imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patents issued thereon.



Michael Z. Lowenstein

03/19/01

Date